

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED

04-23-07

02:55 PM

Order Instituting Rulemaking Regarding
the Implementation of the Suspension of
Direct Access Pursuant to Assembly Bill
1x and Decision 01-09-060.

Rulemaking 02-01-011
(Filed January 9, 2002)

**COMMENTS OF MERCED IRRIGATION DISTRICT
AND MODESTO IRRIGATION DISTRICT REGARDING
PROPOSED OPINION GRANTING PETITION OF
PACIFIC GAS AND ELECTRIC COMPANY, SAN DIEGO
GAS & ELECTRIC COMPANY, AND SOUTHERN CALIFORNIA
EDISON COMPANY FOR MODIFICATION OF DECISION 06-07-030**

Ann L. Trowbridge
DAY CARTER & MURPHY LLP
3620 American River Dr., Suite 205
Sacramento, California 95864
Telephone: (916) 570-2500, ext. 103
FAX: (916) 570-2525
E-mail: atrowbridge@daycartermurphy.com
**Attorneys for Merced Irrigation District
and Modesto Irrigation District**

April 23, 2007

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Regarding
the Implementation of the Suspension of
Direct Access Pursuant to Assembly Bill
1x and Decision 01-09-060.

Rulemaking 02-01-011
(Filed January 9, 2002)

**COMMENTS OF MERCED IRRIGATION DISTRICT
AND MODESTO IRRIGATION DISTRICT REGARDING
PROPOSED OPINION GRANTING PETITION OF
PACIFIC GAS AND ELECTRIC COMPANY, SAN DIEGO
GAS & ELECTRIC COMPANY, AND SOUTHERN CALIFORNIA
EDISON COMPANY FOR MODIFICATION OF DECISION 06-07-030**

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission or CPUC), Merced Irrigation District (Merced ID) and Modesto Irrigation District (Modesto ID, together the Districts) file these Comments Regarding Proposed Opinion Granting Petition of Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company, and Southern California Edison Company for Modification of Decision (D.) 06-07-030 (Proposed Opinion).

1. Introduction.

Merced ID has distributed power to customers – consistent with longstanding statutory authority – since 1996. Merced ID is unique among publicly owned utilities in California because the areas where Merced ID provides service are completely encompassed in the electric service area of PG&E. Modesto ID has provided retail electric service since 1923 and presently serves customers utilizing a diverse mixture of owned generation facilities and wholesale power contracts. A portion of the area where Modesto ID provides electric service is also within PG&E's electric service area. Merced ID and PG&E compete head-to-head for customers in Merced ID's non-exclusive service area and Modesto ID and PG&E compete for customers in the area where Modesto ID and PG&E both provide service. Additionally, the Districts are both customers of PG&E. Accordingly, cost responsibility surcharge (CRS) issues are of vital importance to the Districts.

The Proposed Opinion correctly notes that the Working Group did not achieve consensus regarding “whether the protocols for *new* load should provide an option for MDL customers to choose whether or not to be exempt from the DWR power charge component of Cost Responsibility Surcharge (CRS).”¹ The Proposed Opinion adopts the IOUs’ proposal in this regard and authorizes a one-time opportunity to make an election whether to be exempt from the DWR Power Charge for those new MDL customers eligible for CRS exemptions up to 80 megawatts (MW).²

The protocols proposed in the Petition are *limited to* allocation of the 80 MW of certain *new MDL* CRS exemptions.³ Nonetheless, the Proposed Opinion “agree[s] with PG&E, however, that *other* departing load customers who have already been determined to be exempt from DWR power cost responsibility should not be permitted to elect an option to be subject to the DWR power charge.”⁴

The Districts object to the Proposed Opinion’s expansion and summary disposition of the election issue for other departing load customers. The Commission decision establishing the CRS exemptions relating to PG&E’s Bypass Report clearly contemplates that such exemptions *do not automatically apply – MDL customers, by or through the POU’s, must take some action to claim exemptions*. Accordingly, the Districts urge the Commission to revise the Proposed Opinion to confirm that *all* MDL customers have a one-time opportunity to elect whether to be exempt from the DWR Power Charge.⁵

2. *All MDL May Make a One-Time Election Whether to Be Exempt from the DWR Power Charge.*

The Commission decision establishing the CRS exemptions relating to PG&E’s Bypass Report clearly contemplates that such exemptions do not automatically apply – MDL customers,

¹ Proposed Opinion, p. 2 (emphasis added).

² Proposed Opinion, p. 5.

³ Proposed Opinion, p. 1; D.06-07-030, Ordering Paragraph 21.

⁴ Proposed Opinion, p. 5 (emphasis added).

⁵ The Districts also object to the “New Party” provisions of the Proposed Opinion. (Proposed Opinion, pp. 6-7, Findings of Fact 8 and 9.) The Commission recently addressed New Party (also referred to as Change of Party) issues in Resolution E-3999 and D.07-04-047, which denied Merced ID’s and Modesto ID’s Application for Rehearing of Resolution E-3999 (Application for Rehearing). The time for seeking review of D.07-04-047 has not yet passed. Merced ID and Modesto ID do not make any statement or take any position with respect to the Proposed Opinion that may later be taken as contrary to any position taken or argument presented regarding New Party or Change of Party issues in the Application for Rehearing. The Districts expressly disclaim any intent to take any such position in these Comments and hereby reserve all rights in that regard.

by or through the POU, must take some action to claim exemptions. For example, in D.04-11-014, the Commission stated: “The MDL CRS exception should be applied first to those irrigation districts and/or municipalities that were identified in the Bypass Report. Any portion of the exception *that is not claimed* should be available to other MDL entities”⁶ D.04-11-014 explicitly provides that MDL customers, by or through the POU, must take an action to claim a CRS exception – the exception does not automatically apply. Similarly, POUs (and/or their customers) that are not listed in the Bypass Report must act to claim a CRS exception: “To the extent that any ‘transferred load’ CRS exception remains available *that is not otherwise utilized* by the entities identified in PG&E’s Bypass Report, these and other MDL entities *may seek to apply for such exception* if they are among those entities that meet the criteria identified below.”⁷ The protocols for administering transferred MDL CRS exceptions adopted in Appendix 4 of D.06-07-030 unambiguously implement the one-time election authorized in D.04-11-104.⁸

Notwithstanding Decision Nos. 04-11-014 and 06-07-030, the IOUs ask the Commission to reverse course and find that a one-time election not be extended to MDL other than new MDL eligible for the 80 MW of CRS exceptions. In arguing that the one-time election opportunity should not be extended to MDL other than new MDL eligible for the 80 MW of CRS exemptions, the Petition to Modify accuses the POUs of trying to “‘have their cake and eat it, too.’”⁹ The IOUs suggest that because the POUs argued “very strongly that municipal departing load should be exempt from DWR charges,” they should not now be allowed an election whether to be exempt.¹⁰

In purporting to do away with the one-time election for MDL CRS other than new MDL eligible for the 80 MW of CRS exceptions, the Proposed Opinion focuses on changed market conditions only, and fails to address another key CRS issue. D.06-07-030, which was upheld on rehearing (D.07-01-020), authorizes the use of two methodologies to calculate MDL CRS, depending on whether a MDL customer pays the DWR Power Charge.¹¹ A total portfolio

⁶ D.04-11-014, p. 57, Conclusion of Law 9 (emphasis added).

⁷ *Id.* at 42 (emphasis added).

⁸ D.06-07-030, Appendix 4, Steps 2 and 3.

⁹ Petition to Modify, p. 2.

¹⁰ *Id.*

¹¹ On February 12, 2007, the Districts filed a Petition for Writ of Review of Commission Decisions 06-07-030 and 07-01-020 in the Supreme Court of the State of California (No. S150266). Merced ID and Modesto ID do

adjustment is applied to calculation of CRS for MDL customers who have been determined responsible for the DWR Power Charge to achieve bundled customer indifference. Under D.06-07-030 and D.07-01-020, such an adjustment does not apply to MDL customers who are exempt from the DWR Power Charge. The use of two different calculation methodologies means that customers who are exempt from the DWR Power Charge currently pay a significantly higher CRS than customers who are not exempt. Thus, contrary to the discussion in the Proposed Opinion, “[t]he principles previously applied concerning departing load customers’ exemption from the DWR power charge” *have changed*, and changed dramatically.¹² In addition to changed market conditions, the Commission has taken action that has a material effect on MDL customers’ CRS, depending on whether such customers are exempt from the DWR Power Charge. This Commission action underscores the importance of maintaining a one-time election for all MDL customers.

The Districts urge the Commission to revise the Proposed Opinion to confirm that *all* MDL customers have a one-time opportunity to elect whether to be exempt from the DWR Power Charge.

3. Conclusion.

Based on the foregoing, the Districts urge the Commission to revise the Proposed Opinion to confirm that *all* MDL customers have a one-time opportunity to elect whether to be exempt from the DWR Power Charge.

DATED: April 23, 2007

DAY CARTER & MURPHY LLP

By: /s/ Ann L. Trowbridge
Ann L. Trowbridge

not make any statement or take any position with respect to the Proposed Opinion that may later be taken as contrary to any position taken or argument presented in the Petition for Writ of Review of Commission Decisions 06-07-030 and 07-01-020. The Districts expressly disclaim any intent to take any such position in these Comments and hereby reserve all rights in that regard.

¹²

Proposed Opinion, pp. 5-6.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the **COMMENTS OF MERCED IRRIGATION DISTRICT AND MODESTO IRRIGATION DISTRICT REGARDING PROPOSED OPINION GRANTING PETITION OF PACIFIC GAS AND ELECTRIC COMPANY, SAN DIEGO GAS & ELECTRIC COMPANY, AND SOUTHERN CALIFORNIA EDISON COMPANY FOR MODIFICATION OF DECISION 06-07-030** on April 23, 2007, on all known parties to proceeding R.02-01-011 via electronic mail to those whose addresses are available and via U.S. mail to those who do not have an electronic address.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated this 23rd day of April, 2007, at Sacramento, California.

/s/ Christine J. Lambos
CHRISTINE J. LAMBOS

VIA ELECTRONIC MAIL:

butzjh@apci.com; kmccrea@sabl原因.com; wmogel@saul.com; khojasteh.davoodi@navy.mil; jeff.e.gray@lowes.com; jimross@r-c-s-inc.com; mbrubaker@consultbai.com; Andrew.dalton@valero.com; srusch@plainsxp.com; dhuard@manatt.com; rkeen@manatt.com; cwilliamson@breitburn.com; npedersen@hanmor.com; jlbloom@winston.com; ewheless@lacs.org; SFarkas@ppcla.com; klatt@energyattorney.com; douglass@energyattorney.com; janet.combs@sce.com; michael.backstrom@sce.com; lviejo@astrumutilities.com; pszymanski@sempra.com; tcorr@sempraglobal.com; wkeilani@semprautilities.com; jleslie@luce.com; llund@commerceenergy.com; george.hanson@ci.corona.ca.us; bjl@bry.com; jpmosher@aeraenergy.com; freedman@turn.org; mflorio@turn.org; bfinkelstein@turn.org; jzr@cpuc.ca.gov; norman.furuta@navy.mil; ek@a-klaw.com; nes@a-klaw.com; sdhilton@stoel.com; jrosenbaum@whitecase.com; ahk4@pge.com; clpearce@duanemorris.com; mhindus@pillsburywinthrop.com; pxo2@pge.com; epoole@adplaw.com; bcragg@goodinmacbride.com; hgolub@nixonpeabody.com; jsqueri@goodinmacbride.com; jarmstrong@gmssr.com; lcottle@winston.com; mday@gmssr.com; jguzman@nossaman.com; mmattes@nossaman.com; jguzman@nossaman.com; edwardoneill@dwt.com; bobgex@dwt.com; stevegreenwald@dwt.com; irene@igc.org; rmrlik@intertie.com; ssmyers@att.net; mrh2@pge.com; pvhl@pge.com; dbyers@landuselaw.com.; raj.pankhania@ci.hercules.ca.us; andy.vanhorn@vhcenergy.com; cconklin@ussposco.com; ds1957@camail.sbc.com; kowalewskia@calpine.com; phanschen@mofo.com; wbooth@booth-law.com; mgomez1@bart.gov; maric.munn@ucop.edu; rschmidt@bartlewells.com; tomb@crossborderenergy.com; jbradley@svlg.net; bmcc@mccarthy.com; sberlin@mccarthy.com; jkaspar@stockport.com; chrism@mid.org; jkoontz@calwaterlaw.com; brbarkovich@earthlink.net; bill@jbsenergy.com; josephs@pplant.ucdavis.edu; cmkehrein@ems-ca.com; stuart@robertson-bryan.com;

kidow@saccounty.net; abb@eslawfirm.com; billjulian@sbcglobal.net;
 blaising@braunlegal.com; dcarroll@downeybrand.com; glw@eslawfirm.com;
 mdaponde@pillsburywinthrop.com; blaising@braunlegal.com; lmh@eslawfirm.com;
 lmh@eslawfirm.com; kmills@cfbf.com; rliebert@cfbf.com;
 atrowbridge@daycartermurphy.com; mpa@a-klaw.com; roger.curtis@FDS.com;
 energyhig@aol.com; rdennis@knowledgeinenergy.com; filings@hotmail.com;
 kjsimonsen@ems-ca.com; andrew.cheung@lausd.net; cread@omm.com; gmeyer@pmcos.com;
 ej_wright@oxy.com; bdelamer@capstoneturbine.com; case.admin@sce.com;
 Jennifer.Shigekawa@sce.com; mike.montoya@sce.com; ehull@ci.chula-vista.ca.us;
 vthompson@sempra.com; liddell@energyattorney.com; mshames@ucan.org;
 centralfiles@semprautilities.com; gdixon@semprautilities.com; kmorton@sempra.com;
 apeters@semprautilities.com; kjk@kjkammerer.com; jwmueller@attglobal.net;
 heiertz@irwd.com; tmorgan@electric.com; jskillman@prodigy.net; rhoffman@anaheim.net;
 hal@rwitz.net; sara@oakcreekenergy.com; mdjoseph@adamsbroadwell.com;
 joe.como@sfgov.org; wblattner@sempra.com; scasey@sfwater.org; mpatel@sidley.com;
 rredlinger@chevrontexaco.com; crcq@pge.com; jmckinney@thelenreid.com;
 Cem@newsdata.com; angela.kim@fticonsulting.com; rocky.ho@fticonsulting.com;
 megmeal@aol.com; lisaweinzimer@sbcglobal.net; jim@prudens.com; cpuccases@pge.com;
 yxg4@pge.com; rfg2@pge.com; rochmanm@spurr.org; gerspamer@mofo.com;
 pthompson@summitblue.com; jpoole@realenergy.com; editorial@californiaenergycircuit.net;
 JerryL@abag.ca.gov; mrw@mrwassoc.com; cwootencohen@earthlink.net; chris@emeter.com;
 rita@ritanortonconsulting.com; mary.tucker@sanjoseca.gov; joyw@mid.org;
 rmccann@umich.edu; cpucrulings@navigantconsulting.com; jdalessi@navigantconsulting.com;
 tcrooks@navigantconsulting.com; scott.tomashefsky@ncpa.com; lwhouse@innercite.com;
 dgeis@dolphingroup.org; kdw@woodruff-expert-services.com;
 lawrence.lingbloom@sen.ca.gov; rroth@smud.org; jbaker@daycartermurphy.com;
 karen@klindh.com; lpeters@pacifier.com; rfp@eesconsulting.com;
 running@eesconsulting.com; ayk@cpuc.ca.gov; agc@cpuc.ca.gov; los@cpuc.ca.gov;
 ctd@cpuc.ca.gov; cjb@cpuc.ca.gov; dmg@cpuc.ca.gov; bsl@cpuc.ca.gov; dlf@cpuc.ca.gov;
 yee@cpuc.ca.gov; jab@cpuc.ca.gov; jms@cpuc.ca.gov; jf2@cpuc.ca.gov; kms@cpuc.ca.gov;
 kdw@cpuc.ca.gov; kpc@cpuc.ca.gov; llk@cpuc.ca.gov; lmi@cpuc.ca.gov; mxh@cpuc.ca.gov;
 mts@cpuc.ca.gov; omv@cpuc.ca.gov; psd@cpuc.ca.gov; paj@cpuc.ca.gov; pgh@cpuc.ca.gov;
 gig@cpuc.ca.gov; scr@cpuc.ca.gov; trp@cpuc.ca.gov; JMcMahon@navigantconsulting.com;
 aulmer@water.ca.gov; kgriffin@energy.state.ca.us; ldecarlo@energy.state.ca.us;
 mjaske@energy.state.ca.us; ttutt@energy.state.ca.us; ntronaas@energy.state.ca.us;
 jgeorge@water.ca.gov; jpacheco@water.ca.gov

VIA U.S. MAIL:

DAVE DIETRICH
 DAVIS ENERGY GROUP
 123 C STREET
 DAVIS, CA 95616

PETE GARRIS
 CALIFORNIA DEPARTMENT OF WATER RESOURCES
 3310 EL CAMINO AVENUE, SUITE 100
 SACRAMENTO, CA 95821